

Applicants gratefully acknowledge the Examiner's allowance of Claims 23 - 25 and 30 in this Application. By this Amendment, the Specification and Claims 26, 28 and 35 are amended. The Specification and Claim 26 are amended to delete reference to the language objected to by the Examiner, and Claim 28 is amended to reflect an antecedent basis for the implanted anchor. These amendments remove the Examiner's stated grounds for objection under 35 U.S.C. § 112 of Claims 26 - 29. Claim 35 is amended to include forming concave surfaces in adjacent spinal bone before inserting the endoprosthesis. This amendment further clarifies the invention and distinguishes the claim over the prior art cited by the Examiner. These amendments are supported by the Specification, particularly in Figs. 3, 5, 6, 9 and 10 and at p.6. No new matter is added by way of these amendments.

#### **Rejections Under 35 U.S.C. § 112**

The Specification is objected to under 37 C.F.R. 1.71 for failing to explain how the placement of anchors create "an imaginary platform" of reference points. Applicants have amended the specification to remove "an imaginary platform" as the anchors themselves also create reference points, with the spaces between the anchors defining an area containing the concave-convex surfaces within the patient's spine.

Claims 26 - 29 stand rejected under 35 U.S.C. § 112 as being indefinite. Applicants have amended independent Claim 26 to delete the phrase "an imaginary platform of" with respect to the reference points, thus clarifying that the anchors themselves form reference points in the patient's spine which identify the location of the concave-convex surfaces.

Claim 28 stands rejected under 35 U.S.C. § 112 as being indefinite for the double inclusion of the element "implanted anchor." Applicants have amended Claim 28 to refer to "the" implanted anchor, this removing the Examiner's basis for rejection of this Claim.

In light of the amendments and the remarks stated above, allowance of Claims 26 - 29 is respectfully requested.

### **Rejections Under 35 U.S.C. § 103**

Claim 35 stands rejected under 35 U.S.C. § 103 as being unpatentable over either Keller or Frey. Keller relates to a surgical instrument set for inserting spinal prosthetic devices, and Frey relates to a joint endoprosthesis.

Applicants have amended Claim 35 to further clarify that the method as claimed includes the step of forming concave surfaces in adjacent spinal bones, as disclosed in the Specification at page 10. Keller and Frey lack each lack the step of forming the bone in order provide concave bone surfaces to receive the endoprosthetic devices. Moreover, Keller teaches away from the invention in that the Keller endoprosthesis device discloses outer surfaces that are "essentially planar" (col. 4, line 61).

Thus, neither Keller or Frey suggest or teach the present invention. Allowance of Claim 35 is respectfully solicited.

In view of the foregoing, it is submitted that all of the stated grounds of rejection have been properly accommodated or rendered moot, and that the application is fully in condition for allowance. Applicants' therefore respectfully request that the Examiner reconsider all currently outstanding objections and rejections, and that they be withdrawn.

The Examiner is invited to telephone the undersigned representative if it is believed that an interview might be useful for any reason.

Respectfully submitted,

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